

Jennifer L. Larson (JL 8114)
HELLER EHRMAN LLP
Times Square Tower
7 Times Square
New York, New York 10036
Telephone: (212) 832-8300
Facsimile: (212) 763-7600

James G. Ryan (JR 9446)
Marianne McCarthy (MM 8807)
Cullen and Dykman LLP
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Telephone: (516) 357-3700
Facsimile: (516) 357-3792

Attorneys for Plaintiff Philip Morris USA Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILIP MORRIS USA INC.,

Plaintiff,

v.

No. 07 Civ. 8359 (LAK)(GWG)

A & V MINIMARKET, INC., a New York
corporation doing business as A & V MINI
MARKET, *et al.*,

Defendants.

REQUEST FOR CERTIFICATE OF DEFAULT

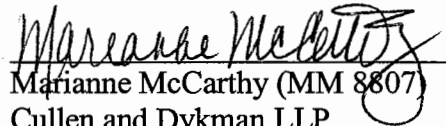
TO THE CLERK OF THE COURT:

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Local Civil Rule 55.1, Plaintiff Philip Morris USA Inc. hereby requests that you enter default in this action against Defendant 394 Grocery Corp. Default should be entered because 394 Grocery Corp. has not answered or responded to the Complaint within the time prescribed by Rule 12 of the Federal Rules of Civil Procedure or otherwise appeared in this action. The facts justifying the entry of

default are set forth in the attached Affidavit of Marianne McCarthy in Support of Request for Certificate of Default, and a proposed Clerk's Certificate of Default is also attached hereto.

Dated: 3/27, 2008

CULLEN AND DYKMAN LLP


Marianne McCarthy (MM 8807)
Cullen and Dykman LLP
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Telephone: (516) 357-3700
Facsimile: (516) 296-9155

Of counsel:

Jennifer L. Larson (JL 8114)
HELLER EHRMAN LLP
Times Square Tower
7 Times Square
New York, New York 10036
Telephone: (212) 832-8300
Facsimile: (212) 763-7600

Attorneys for Plaintiff Philip Morris USA Inc.

Jennifer L. Larson (JL 8114)
HELLER EHRMAN LLP
Times Square Tower
7 Times Square
New York, New York 10036
Telephone: (212) 832-8300
Facsimile: (212) 763-7600

James G. Ryan (JR 9446)
Marianne McCarthy (MM 8807)
Cullen and Dykman LLP
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Telephone: (516) 357-3700
Facsimile: (516) 357-3792

Attorneys for Plaintiff Philip Morris USA Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILIP MORRIS USA INC.,

Plaintiff,

v.

A & V MINIMARKET, INC., a New York
corporation doing business as A & V MINI
MARKET, *et al.*,

Defendants.

No. 07 Civ. 8359 (LAK)(GWG)

**AFFIDAVIT OF MARIANNE MCCARTHY
IN SUPPORT OF REQUEST FOR CERTIFICATE OF DEFAULT**

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

MARIANNE MCCARTHY, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am Of Counsel to the law firm of
Cullen and Dykman LLP, co-counsel to Heller Ehrman LLP, attorneys for Plaintiff Philip Morris

USA Inc. I am fully familiar with the facts and circumstances surrounding this action. I make this declaration in support of Philip Morris USA Inc.'s request for a Certificate of Default against Defendant 394 Grocery Corp. pursuant to Fed. R. Civ. P. 55(a) and Local Civil Rule 55.1.

2. Upon information and belief, 394 Grocery Corp. is not an infant, in the military, or an incompetent person.

3. Philip Morris USA Inc. commenced this action on September 26, 2007 by the filing of the Summons and Complaint. A true and correct copy of the Summons and Complaint (without exhibits) is annexed hereto as Exhibit A.

4. In accordance with Fed. R. Civ. P. 4(h)(1), Philip Morris USA Inc. effected service of process on 394 Grocery Corp, on November 1, 2007, by serving two (2) copies of the Summons and Complaint on Donna Christie, Authorized Agent in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York. These facts are set forth in the Affidavit of Service of Jessica Miller sworn to November 5, 2007, a true and correct copy of which is annexed hereto as Exhibit B.

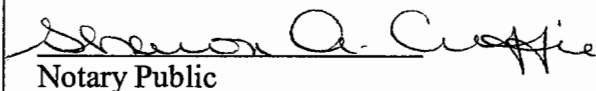
5. Under Fed. R. Civ. P. 12(a)(1)(A), 394 Grocery Corp. was required to answer or respond to the Complaint no later than November 23, 2007.

6. 394 Grocery Corp. has not answered the complaint or otherwise defended the action, and the time for 394 Grocery Corp. to do so has expired.

WHEREFORE, on behalf of Philip Morris USA Inc., I respectfully request a Certificate of Default against 394 Grocery Corp.


MARIANNE MCCARTHY

Sworn to before me this
26th day of March, 2008.


Notary Public

Sharon A. Cuffie
Notary Public, State of New York
No. 01CU6020584
Qualified in Suffolk County
Commission Expires March 01, 2011

Jennifer L. Larson (JL 8114)
HELLER EHRMAN LLP
Times Square Tower
7 Times Square
New York, New York 10036
Telephone: (212) 832-8300
Facsimile: (212) 763-7600

James G. Ryan (JR 9446)
Marianne McCarthy (MM 8807)
Cullen and Dykman LLP
100 Quentin Roosevelt Boulevard
Garden City, New York 11530
Telephone: (516) 357-3700
Facsimile: (516) 357-3792

Attorneys for Plaintiff Philip Morris USA Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILIP MORRIS USA INC.,

Plaintiff,

v.

No. 07 Civ. 8359 (LAK)(GWG)

A & V MINIMARKET, INC., a New York
corporation doing business as A & V MINI
MARKET, *et al.*,

Defendants.

CLERK'S CERTIFICATE OF DEFAULT

I, J. Michael McMahon, Clerk of the United States District Court for the Southern District of New York, do hereby certify that a copy of the Summons and Complaint in this action, filed September 26, 2007, according to the proofs of service, was served upon Defendant 394 Grocery Corp., in accordance with Rule 4(h)(1) of the Federal Rules of Civil Procedure. In particular, on November 1, 2007, Donna Christie, Authorized Agent in the Office of the

Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, accepted service of the Summons and Complaint.

I further certify that the docket entries indicate that 394 Grocery Corp. has not filed an answer or otherwise moved with respect to the Complaint.

The default by Defendant 394 Grocery Corp. is hereby noted.

Dated: New York, New York

_____, 2008

J. Michael McMahon
Clerk of the Court

By: _____
Deputy Clerk